United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-7453 76-7453

United States Court of Appeals

FOR THE SECOND CIRCUIT

KAHLMAN LINKER and DYNAMISMM,

Plaintiffs-Appellants,

v.

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN, SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, HENRY J. SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

KAHLMAN LINKER
Plaintiff-Appellant Pro Se
67 Broad Street
New York, N.Y. 10004

PAGINATION AS IN ORIGINAL COPY

Index to Appendix.

United States Court of Appeals

FOR THE SECOND CIRCUIT

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MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., GOLDMAN, SACHS & CO., WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974, HENRY J. SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974, THE EQUITABLE LIFE HOLDING CORP., and all others whom discovery may show should be named,

Defendants-Appellees.

Docket Entries.

8-10-76	Filed complaint. Issued summons.
8-30-76	Filed affidvt. of Kahlman Linker and ORDER TO SHOW CAUSE for prel. injunction. Answering papers to be filed on or before 9-3-76 at 3:00 p.m. Werker, J. OSC ret. on 9-8-76.

9-01-76	Filed order that deft's time to answer is ext. to 10-5-76 -- Werker, J. m/n by pro-se clerk.
9-03-76	Filed by deft. Equitable Life Assurance affdvt. in opposition to plft's motion for prel. injunction.
9-03-76	Filed by deft. Equitable Life Assurance memorandum in opposition to prel. injunction.
9-08-76	Hearing on motion held and concluded. Order to be submitted. -- Werker, J. (court dismissing complaint)
9-16-76	Filed pltf's suppl. brief in support of pltf's OSC for prel. inj.
9-16-76	Filed pltf's motion for reconsideration with memo endorsed: reargument denied. So ordered. -- Werker, J. m/n by pro-se clerk.
9-16-76	Filed order dismissing the complaint with prejudice and without costs, with respect to each and every defendant. -- Werker, J. m/n by pro-se clerk.
9-16-76	Filed pltfs notice of appeal to the USCA for the 2nd Circuit from order of 9-16-76 -- m/copies.
9-22-76	Filed transcript of record of proceedings dtd 9-8-76.
9-27-76	Filed notice that the record on appeal has been certified and transmitted to the USCA.
9-29-76	Filed summons and Marshals returns - served: Francis V. Walker, Informatics, Inc. -- UNABLE TO SERVE Walter F. Bauer, Informatics, Inc. -- 8-27-76 The Equitable Life Holding Corp. -- 8-16-76 Merrill Lynch Pierce & Fenner & Smith, Inc. -- 8-18-76 Goldman Sachs & Co. -- 8-18-76 J. Henry Smith, The Equitable Life Assurance Society of the US - 9-2-76 Dean Witter & Co. Inc. -- UNABLE TO SERVE (see below for 2nd returns Werner L. Frank, Informatics Inc. -- UNABLE TO SERVE Dean Witter & Co. Inc. -- 9-9-76
9-29-76	Filed notice that the 1st suppl. record on appeal has been certified and transmitted to the USCA.
9-30-76	Filed pltf's request to amend notice and order of dismissal with memo endorsed. Plaintiffs request denied. So ordered. - Werker, J. m/copy to pltf. pro-se.

9-30-76	Filed Marshals return - unable to serve Edmund A. Hamberger.
10-7-76	Filed deft. Merrill Lynch et al.'s affdvt. and notice of motion for an order pursuant to Rule 7 of Appellate Procedure on grounds that plft. did not file a bond for costs. - ret. 10-14-76

LINKER 4a

(8)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

KAHLMAN LINKER and DYNAMISM, Plaintiffs, Pro Se,	
v.	76 Civ. 3543 (HFW)
MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., AND GOLDMAN SACHS & CO.,	ORDER OF Dismissal
-and-	
WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974,	
-and-	
J. HENRY SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974,	
-and-	
THE EQUITABLE LIFE HOLDING CORPORATION,	
-and-	
all others whom discovery may show should be named,	
Defendants.	

On reading the complaint herein and on hearing the arguments of plaintiff pro se and of counsel for defendants at a hearing on September 8, 1976, and on all the papers and proceedings heretofore had herein, and

It appearing to the Court that plaintiff pro se has no beneficial interest in the matter of the merger which

is the subject of the complaint herein, the Court of its own motion makes the following order:

ORDERED that the complaint be, and the same is, hereby Dismissed with prejudice and without costs, with respect to each and every defendant, namely, Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., Goldman Sachs & Co., Walter F. Bauer, Werner L. Frank, Francis V. Walker, and all other executive officers and directors of Informatics, Inc., as of February 27, 1974, J. Henry Smith, former Chairman and Director, and all other directors of the Equitable Life Assurance Society of The United States, as of February 27, 1974, and The Equitable Life Holding Corporation.

Dated: New York, New York
September 15, 1976

Henry F. Werker
United States District Judge

DYNAMISMM

Action in the enlightened interests of
Investors of Small or Moderate Means
67 Broad St. (32nd Floor), New York, N.Y. 10004
Telephone (212) 425--3620

6a

RECEIVED IN CHAMBERS
OF JUDGE HENRY F. WERKER
SEP 24 1976

SEPTEMBER 24, 1976

HON. JUDGE HENRY F. WERKER,
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT
FOLEY SQUARE
NEW YORK, N. Y.

RE: ORDER OF DISMISSAL (76 CIV. 3543)(HFW)

DEAR SIR:

PLAINTIFF LINDER RESPECTFULLY DEMANDS THAT THE COURT INITIAL AND DATE THE WORDS (ON THE FIRST PAGE OF THE ATTACHED ORDER OF DISMISSAL (76 CIV. 3543(HFW)), "ONLY INDIRECT", THEREAFTER RETURNING SUCH COPY TO PLAINTIFF, AND FILING AND SERVING FACSIMILE COPIES AS REQUIRED BY THE COURT'S RULES.

THE COURT IS WELL AWARE THAT THE WORDING OF THE ORIGINAL ORDER OF DISMISSAL WAS ERRONEOUS.

RESPECTFULLY SUBMITTED

PLAINTIFF, PRO SE

CC: TO ALL DEFENDANTS

MICROFILM
SEP 30 1976

9/27/76

Plaintiff's request denied.

SO ORDERED.

DYNAMISMM

Action in the enlightened interests of Investors of Small or Moderate Means

67 Broad St. (32nd Floor), New York, N.Y. 10004

Telephone (212) 425-3620

79

August 26, 1976

Hon. Judge Henry F. Werker
U.S. District Court
Foley Square
New York, N.Y.

Re: 76 Civ. 3543

Dear Judge Werker:

I wish respectfully to request that, in the great public interest, you do not grant a postponement to defendants for answering plaintiff's complaint in the above-cited proceeding.

Difficult as it may be even to imagine, such proceeding may later be recognized as perhaps the initial medium by which the "Nixon-Ford-S.E.C.-New York Stock Exchange Cover-Up" (perhaps the most devilishly clever masquerade in history) was finally exposed.

It has long concerned me that the public and the Congress have been gulled by Watergate -- not realizing that Watergate has purely political implications. What has not yet been exposed is, "What did these wealthy people and corporations get (in "accommodation") from Nixon, et al., for contributing so generously to the guaranteeing of Nixon's election?" Isn't it probable that the tapes most importantly still hide the records of Nixon's commitments to those people, particularly the members of the securities industry who were perennially the best election fund raisers?

You will observe from #76 Civ.-4163 (attached), plaintiff and Dynamismm have a Petition of Review before the U.S. Court of Appeals against the S.E.C., alleging that it "colluded with, aided, abetted, strengthened, perpetuated and made absolute the control of the Board of Directors of the New York Stock Exchange by the so-called 'Private Club' of the Exchange, thus creating what is undoubtedly the most pernicious and wide-ranging of cartels in all time. . ." You will also observe in the State Court, Show Cause Actions (#08507/76, #09820/76, and #11160/76) against the Directors of the Stock Exchange of a nature related to the U.S. Court of Appeals proceeding. (supra)

You will further observe a State Court Show Cause proceeding (#10789/76) v. the Attorney General of the State of New York, alleging his having protected and rendered absolute and perpetual the control of the "Private Club" of the Board of Directors of the New York Stock Exchange, and thus of its cartel.

The above are, of course, evidences of special privilege of a pernicious type granted by the Nixon-Ford Administrations to the "Private Club" of the securities industry -- all being general in nature.

The proceeding now before the Court (yours) is an instance where the SEC provided "accommodation" to an institution and to members of "the Club" in order to defraud stockholders of small or moderate means.

Plaintiffs have another suit yet to be filed against a former Chairman of the S.E.C. alleging that he used his position to qualify the registration and sale of worthless stock in a company in which he was a promoter and large stockholder (at nominal cost per share).

When and as you receive my Order to Show Cause in the instant proceeding, you will observe that the SEC has been successful for 2 1/2 years in preventing disclosure of their capriciousness with respect to their review of the Informatics Proxy Report.

Please do not let defendants in this case use tactics for continuing to keep uncovered their pernicious, masterfully deceptive actions. The public has the right to know and it is vital that they soon know what has been going on. Nothing could be more destructive to this country than that a new President be elected and this evil remain unexposed until after the election.

Faithfully,

/s/ Kahlman Linker

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PKO-SE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

KAHLMAN LINKER and DYNAMISMM,

Plaintiffs, Pro Se,

v.

MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN, SACHS & CO.;

-and-

WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974;

-and-

J. HENRY SMITH, former Chairman and Director, and all other directors of the EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974;

-and-

THE EQUITABLE LIFE HOLDING CORPORATION;

-and-

all others whom discovery may show should be named,

Defendants.

- -x

JUDG. WERKER

76 Civ. 3543

ORDER TO SHOW CAUSE
FOR
SUMMARY JUDGMENT

Upon the annexed affidavit of KAHLMAN LINKER, sworn to on the 31st day of August, 1976, it is hereby

ORDERED, that defendants, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN, SACHS & CO., or their attorneys, show cause before a Judge of this Court, at the

United States Courthouse, Foley Square, New York, New York, in Room ___, at _____ M. on SEPTEMBER _____, 1976, or as soon thereafter as counsel may be heard, why an order pursuant to FRCP #56 for summary judgment should not be made declaring that the evidentiary facts as set forth in plaintiffs' cause of action specifically against Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and Goldman, Sachs & Co. sufficiently establish petitioners' cause of action to entitle petitioners to judgment against said defendants as set forth in the attached affidavit in support of Order to Show Cause for summary judgment, and it is further

ORDERED, that a copy of this Order, together with the papers upon which it is granted, be personally served upon the defendants or their attorneys on or before _____, 1976, by _____ M., and that such service shall be deemed good and sufficient. Answering papers to be served and filed on or before September___, 1976, by _____ M.

DATED: NEW YORK, N.Y.
AUGUST 31, 1976

_____
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

KAHLMAN LINKER and DYNAMISMM,

Plaintiffs, Pro Se,

v.

MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN, SACHS & CO.;

-and-

WALTER F. BAUER, WERNER L. FRANK, FRANCIS V. WALKER, and all other executive officers and directors of INFORMATICS, INC., as of February 27, 1974;

-and-

J. HENRY SMITH, former Chairman and Director, and all other directors of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, as of February 27, 1974;

-and-

THE EQUITABLE LIFE HOLDING CORPORATION;

-and-

all others whom discovery may show should be named,

Defendants.

- x

JUDGE WERKER

76 Civ. 3543

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

KAHLMAN LINKER, being duly sworn, deposes and says:

I am one of two plaintiffs in the above proceeding, DYNAMISMM being the other, an entity for which not-for-profit corporation status in the State of New York is now being applied.

I make this affidavit in support of plaintiffs' petition for an Order to Show Cause for Summary Judgment in the above proceeding, and represent to the Court as follows:

1. At a special meeting of stockholders, held on February 27, 1974, the stockholders of INFORMATICS, INC., a Delaware corporation, purportedly approved a "merger" of Informatics with Equitable Computer Corporation, a Delaware corporation and wholly-owned subsidiary of Equimatics, Inc., itself a more than 90% owned subsidiary of EQUITABLE LIFE HOLDING CORPORATION, a Delaware corporation and itself a wholly-owned subsidiary of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (hereinafter "The Equitable,") a New York corporation.

2. Plaintiffs possess evidence that the purported "merger" may have been a manipulative and deceptive device, without valid business or corporate purpose, contrived for self-dealing objectives by the management of Informatics, Inc., and The Equitable, the acquiring company, to appropriate solely for their joint benefit, and grievously at the expense of the non-management stockholders of Informatics, Inc., the entire stock ownership of Informatics, Inc., at a time and price arbitrarily and capriciously set by management and The Equitable, and by methods which would have been prohibited to the acquiring company had the purported "merger" been subject to the laws governing corporations incorporated in New York State.

3. Plaintiffs, in protesting at the special meeting of stockholders of Informatics, Inc., the arbitrary and capricious "freeze-out" of non-management stockholders by the management of

Informatics, Inc., and The Equitable, was then aware only of false or misleading disclosure of material facts and the omission of disclosure of material facts in the Proxy Report for that meeting. Upon later probing, extending over many months, plaintiff became aware that:

(a) management's communications with stockholders of Informatics, Inc., in relationship to the forthcoming "merger," sent to stockholders prior to January 30, 1974, (the date of the Proxy Report for the Special Meeting of Stockholders) may also have been false or misleading with respect to disclosure of material facts:

(b) MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., DEAN WITTER & CO., INC., and GOLDMAN, SACHS & CO. may have been acting in concert with the managements of Informatics, Inc., and The Equitable in arbitrary, capricious and illegal ways unfairly to treat the non-management stockholders of Informatics, Inc., with respect to such "merger," and

(c) difficult as it may be even to imagine, the Securities and Exchange Commission and its Corporation Finance Division (responsible for full and open disclsure in the Proxy Report) may have been colluding with the above-named three securities firms and the management of Informatics, Inc., and The Equitable to violate the disclosure provisions of the Securities and Exchange Act, as well as their own (SEC) promulgated

rules, to the grievous injury of the non-management stockholders of Informatics, Inc.

(d) In addition to the clearly illegal, if not fraudulent, nature of the so-called "merger" device, there seems evidence to support a belief that bribery and influence "peddling" may have been practiced by the broker-dealer defendants in obtaining from the S.E.C. acceptability of false or misleading disclosure in the Proxy Report soliciting stockholder approval of the purported merger, and bribery between the management of Informatics, Inc., and The Equitable in obtaining from the former the willingness to breach management's fiduciary responsibilities to the Company's stockholders, and so unfairly, if not fraudulently, freeze-out the Company's non-management stockholders to the unfair, if not fraudulent, advantage of The Equitable.

4. On August 11, 1976, plaintiffs filed their complaint in the instant proceeding (76 Civ. 3543), alleging collusion to defraud stockholders in violation of the securities laws.

5. From February 28, 1974, when plaintiff, Linker, first registered his complaint with the S.E.C. with respect to the false or misleading disclosure of the Proxy Report for the "merger" purportedly approved by stockholders on February 27, 1974, the record has been one of capriciously delaying tactics practiced by defendants and/or others collusively involved in the instant proceedings. However persistent his efforts, plaintiff was able to obtain by October 30, 1975 -- <u>some twenty months later</u> -- only a small

amount of information on the true nature of the S.E.C.'s review of the proxy material with respect to the Informatics - Equimatics "merger" purportedly approved by stockholders on February 27, 1974. Such small amount of documented information was itself obtained some six months after his original written request of May 16, 1975, under Freedom of Information Act procedures -- which procedures normally mandate ten day availability of the documents requested. Further, plaintiff filed suit under the Freedom of Information Act on January 9, 1976, to obtain information clearly in the possession of the S.E.C., and such proceeding has not yet been even considered by the assigned Judge (in the District Court of the District of Columbia) as of today, some seven months later, even though the courts are required to give expedited preference to Freedom of Information Act proceedings.

Thus, two years and six months have passed since plaintiff's original complaint to the S.E.C., and plaintiff has still been unable to obtain access to the Preliminary Proxy Report for the "merger" purportedly approved by stockholders on February 27, 1974 -- and it has been documented that five copies of such Preliminary Proxy Report had been sent to the S.E.C. in Washington.

6. It is now some two and one-half years since The Equitable Life Holding Corporation arbitrarily, capriciously, with abuse of power and not according to law, fraudulently may have "frozen-out" the non-management stockholders of Informatics, Inc., by the use of an illegal "manipulative or deceptive device,"

applying unquestionably false or misleading disclosure. And such "freeze-out" was at an arbitrarily and capriciously set price equivalent to but a small fraction of the true worth of the stock. Perhaps the best evidence of the latter may be found in a statement made, within an "Informatics, Inc., news release," received by plaintiff on August 23, 1976, by Wilson Cooper, Vice President, Systems Technology, for Informatics, Inc.:

> "Informatics, Cooper said, is now the world's leading independent supplier of software products with an installed product base of over $50 million at more than 2,000 locations throughout the world."

As described above, Informatics unquestionably has now also achieved but a small degree of its near-term or long-term growth potential, both in revenues and net income -- and the some $12 million for which The Equitable capriciously and illegally, if not fraudulently, forced Informatics shareholders to sell their stock was thus but a small fraction of its true worth.

Unquestionably, as well, the device used by The Equitable Life Holding Corporation to "freeze out" Informatics' non-management stockholders was both illegal, if not fraudulent, based on a recent case precedent in the United States Court of Appeals, Second Circuit (Marshel, et al. v. AFW Fabric Corp., et al., No. 75-7404, February 13, 1976).

7. The actions (and omissions of action) on the part of Merrill, Lynch, Pierce, Fenner & Smith, Inc., as presented in the Complaint for this proceeding (pp. 15 A-2, 18, 19, 20, 21, 29 D and 29 F) do not only show such firm as having conspicuously violated

some of the most fundamental provisions of the Securities Exchange Act, namely §§10(b) et seq. (as well as Rule 10 b-5), 13(d)(1) et seq., and 16(a) et seq. (transcripts of which are appended). Perhaps more importantly, Merrill Lynch's actions (and omissions of actions) show such firm as having conducted itself with the supreme confidence that it possessed special privileges exempting it from publicly or privately (to the S.E.C.) reporting as is required of other registered firms or otherwise complying with the securities laws or rulings of the S.E.C.

There seems evidence that the S.E.C. may have been given orders by "a higher power" in the Administration that Merrill Lynch was to be "accommodated" in any way Merrill Lynch requested, even though such meant the S.E.C. would, in fact, be clearly aiding or abetting a fraud against investors, as in the subject matter of the Complaint in the instant proceeding.

Thus, the S.E.C. had not only "exempted" Merrill, Lynch from publicly reporting and giving up the profits from stock held for six months or less (applicable to beneficial holders of 10% or more of the outstanding common capitalization); and the S.E.C. had not only "exempted" Merrill Lynch from publicly reporting the acquisition of stock "for the purpose of changing or influencing the control of the issuer." The subject matter of the Complaint in the instant proceeding also shows the S.E.C. as arbitrarily, capriciously, with abuse of discretion, and not according to law having withheld, if not prevented, truthful disclosure of the material facts once the S.E.C. had aided and/or abetted the false or misleading disclosure of material facts in the Proxy Report for the

"merger," which was purportedly approved by the stockholders of Informatics, Inc., on February 27, 1974.

8. The actions (and omissions of actions) of Dean Witter & Co., Inc., did not evidence the depth or breadth of involvement applicable to Merrill Lynch (see pages of the Verified Complaint 15A-3, 21, 22, 29C, 29F and question #4 on page 1 in Exhibit A, appended). Nonetheless, Dean Witter & Co. was freely "accommodated" by the S.E.C. to infringe the Securities Exchange Act (§10(b) et seq. and Rule 10 b-5), violating such and other laws.

9. There is not on the record any overt action on the part of Goldman, Sachs & Co. in violation of the law. However, the fact that the firm served as advisor to The Equitable in the "merger," purportedly approved by the stockholders of Informatics, Inc., on February 27, 1974, unquestionably taints such firm with active complicity in whatever illegal, if not fraudulent, acts were committed by defendants, joint or several. Perhaps more central to liability in the instant proceeding, the senior partner of Goldman, Sachs & Co. unquestionably is accepted as having been one of the most effective, if not the most effective fund-raiser for the Nixon and Ford election campaigns, so that Goldman, Sachs' function as advisor to The Equitable for the "merger" may largely have taken the form of what objective people would call "bribery" or "influence peddling" which resulted in unlawful conduct on the part of the S.E.C. and perfidious conduct on the part of the managements of Informatics, Inc., and The Equitable in their illegal, if not fraudulent treatment of the non-management stockholders of Informatics, Inc.

10. The capricious tactics -- applied by defendants

and/or others collusively involved in the instant proceeding -- for postponing (for some two and one-half years), if not preventing legal resolution of the Complaint, continues. On August 26, 1976, defendants petitioned the Court, against the opposition of plaintiffs, for postponement of their answer to the Complaint, filed and served on defendant on August 11, 1976. (Plaintiff, Linker, responded on August 27, 1976, by filing an Order to Show Cause for Preliminary Injunction on defendant, The Equitable Life Holding Corporation, for the appointment of a Receiver to protect the interests of the illegally and fraudulently forced-out stockholders pending legal resolution of the complaint.)

11. Plaintiff is proceeding by Order to Show Cause against the special defendants named in this affidavit because only by such process can plaintiff prevent further catastrophic wearing away of the inordinately small financial resources he has available for surviving the course of this litigation proceeding, while the resources available for litigation by defendants are virtually limitless. Further, plaintiff has been carrying on this fight alone and with his own resources, particularly inasmuch as it has not been feasible to obtain effective financial help from other protesting stockholders, almost all of whom were also individuals of relatively small means.

Perhaps of equal importance, the capriciously delaying tactics of defendants and/or those collusively involved have been imposing increasing difficulties on plaintiffs for obtaining justice. For example, relevant to one of the important claims of plaintiff in the instant proceeding, provisions of the Securities

Exchange Act (§16b) state, ". . but no such suit shall be brought more than two years after such profit was realized." Defendants must not be permitted to compound their illegal, if not fraudulent actions in respect to the purported "merger" by capricious postponement and procedural devices calculated to wear down plaintiff financially.

12. It is further submitted that the evidentiary facts as set forth herein and within the Complaint sufficiently establish petitioners' cause of action to entitle petitioners to judgment against defendants.

WHEREFORE, petitioner respectfully requests this Court to order defendants, Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and Goldman, Sachs & Co., to show cause why summary judgment should not be entered against them, specifically:

> Order Merrill, Lynch, Pierce, Fenner & Smith, Inc., to pay all profits received from purchases and sales of the stock of informatics, Inc., in violation of the Securities Exchange Act (§16(b)) To Informatics, Inc.; order Merrill, Lynch Pierce, Fenner & Smith, Inc., to pay appropriate damages to DYNAMISMM for violations of the Securities Exchange Act (§13(d)(1) et seq.); and order Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and Goldman, Sachs & Co., to pay appropriate damages to Dynamismm for violations of the Securities Exchange Act (§10(b) et seq. and Rule 10b-5), and other laws, especially those relating to breach of fiduciary responsibility, "bribery" and "influence peddling;"

Award plaintiff, Linker, reasonable fees and costs of investigating and obtaining evidence, such costs to be assessed against Merrill, Lynch, Pierce, Fenner & Smith, Inc., Dean Witter & Co., Inc., and Goldman, Sachs & Co., and

Grant such other and further relief as the Court may deem just and proper.

No previous application for the relief sought herein has been made.

Kahlman Linker

Sworn to before me this
31st day of August, 1976.

ALICE L. PICARD
Notary Public State of New York
No. 43-4527933
Qualified in Richmond County
Term Expires March 30, 1978

KAHLMAN LINKER
Plaintiff, Pro Se
67 Broad Street
New York, New York 10004
(212) 425-3620

Annexed herein, pursuant to the General Rules of the United States District Court for the Southern District of New York, Rule 9(G) in respect to Order to Show Cause for Summary Judgment, pursuant to FRCP #56, there is annexed hereto a statement of the material facts on which plaintiff contends there is no genuine issue to be tried.

1(a) Merrill, Lynch, Pierce, Fenner & Smith, Inc., has violated Securities Exchange Act Sec. 16 with respect to the disclosure requirements for a person "who is directly or indirectly the beneficial owner of more than 10 per centum of any class of equity security which is registered pursuant to Section 12 of this title. ." The Proxy Report for the Annual Meeting (held on July 26, 1973) of Informatics, Inc., states,

> "The only person owning of record or known to management to own beneficially 10% or more of the Corporation's outstanding stock is Merrill Lynch, Pierce, Fenner & Smith, Inc., which on June 7, 1973, owned of record 520,933 shares (34%) of the Corporation's outstanding stock;"

and the Proxy Statement for the special meeting of stockholders of Informatics, Inc. (held February 27, 1974) stated,

> "To the knowledge of the management of Informatics, on the record date no single stockholder of Informatics owned of record or beneficially more than 10% of the Informatics common stock, except that Merrill Lynch Pierce, Fenner & Smith, Incorporated owned of record on that date 445,847 shares of Informatics common stock which represents 26.5% of the total number of shares outstanding. Management believes that a substantial number of such shares are beneficially owned by customers of that firm."

Plaintiff has carefully checked the official summary of the transactions of officers, directors and principal stockholders, published by the S.E.C. and no record appears therein of purchases,

sales or holdings on the part of Merrill Lynch, Pierce, Fenner & Smith, Inc., for the years 1973 or 1974. Obviously, such firm had not reported, according to law, its purchases, sales or holdings, a violation of Securities Exchange Act, Section 16.

(b) The Proxy Reports for the annual meeting of Informatics (held on July 26, 1973) and for the special meeting of stockholders (held on February 27, 1974) contain no evidence indicating compliance on the part of Merrill Lynch, Pierce, Fenner & Smith, Inc., with Securities Exchange Act Sec. 13(d)(1) et seq. with respect to one who "is directly or indirectly the beneficial owner of more than 5 percentum" of such class of security." Obviously, Merrill Lynch had not reported, according to law, its purchases and holdings, a violation of Securities Exchange Act, Sec. 13(d)(1) et seq.

(c) The Proxy Report for the special meeting of stockholders (held on February 27, 1974), as indicated supra, states, "Management believes that a substantial number of such shares (owned of record by Merrill Lynch) are beneficially owned by customers of that firm." Obviously, such statement is materially false or misleading, a violation by Merrill Lynch of Securities Exchange Act Section 10 and (SEC) Rule 10b-5.

2. Dean Witter & Co., Inc., served as advisor to management of Informatics, Inc. with respect to the "merger" of Informatics and Equimatics, purportedly approved by stockholders on February 27, 1974, and, as stated in the Proxy Report," had advised the Board of Directors of Informatics that in its opinion the price of $7.00 per share to be paid is fair and reasonable to

the stockholders of Informatics," for which Dean Witter & Co. received a fee of $25,000.00. The record shows that such fee was received by Dean Witter & Co., Inc., without the firm having made an appraisal of the stock or even having written an opinion (for the benefit of the Board of Directors of Informatics) at the time the preliminary proxy material was submitted to the S.E.C. Obviously, the statement (above) is materially false or misleading, a violation by Dean Witter & Co., Inc., of Securities Exchange Act Section 10 and (S.E.C.) Rule 10b-5.

3. Goldman, Sachs & Co. placed an advertisement in newspapers informing the public that it had served as advisor to The Equitable Life Assurance Society of the United States with respect to the merger of Informatics, Inc., and Equimatics, Inc. Complicity in whatever violations of the law as may have been performed by Merrill Lynch, Pierce, Fenner & Smith, Inc., and Dean Witter & Co., Inc. (the subject matter of this Order to Show Cause) is, to be sure, chargeable against Goldman, Sachs & Co.

(KL

[¶ 1086]

REGULATION OF THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES

Sec. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

[¶ 1087]

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

S.E.C. RULE 10b-5

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange.

(a) To employ any device, scheme, or artifice to defraud.

"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, "in connection with the purchase or sale of any security."

Securities Exchange Act of 1934

[¶ 1114]

PERIODICAL AND OTHER REPORTS

Sec. 13. (a) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

[¶ 1115]

(b) The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter, and, in the case of carriers subject to the provisions of section 20 of the Interstate Commerce Act, as amended, or carriers required pursuant to any other Act of Congress to make reports of the same general character as those required under such section 20, shall permit such carriers to file with the Commission and the exchange duplicate copies of the reports and other documents filed with the Interstate Commerce Commission, or with the governmental authority administering such other Act of Congress, in lieu of the reports, information and documents required under this section and section 12 in respect of the same subject matter.

[¶ 1116]

(c) If in the judgment of the Commission any report required under subsection (a) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

[¶ 1117]

(d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940,

is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

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(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

[¶ 1160]

DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS

Sec. 16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[¶ 1161]

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

[¶ 1162]

(c) It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such

APPENDIX C PAGE 4 - SECURITIES EXCHANGE ACT - SEC 13(CONT'D); AND SEC. 16

issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

[¶ 1123]

(d)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the

APPENDIX - PAGE 5 - SECURITIES EXCHANGE ACT - SEC. 16 (CONT'D)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAHLMAN LINKER AND DYNAMISMM,

Plaintiffs,

-against-

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., et. al.,

Defendants.

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NOTICE OF MOTION
76 Civ. 3543
(Judge Werker)

S I R S:

PLEASE TAKE NOTICE that upon all the pleadings and proceedings heretofore had herein and upon the annexed affidavit of THOMAS J. HANRAHAN, sworn to the 7th day of September, 1976, the undersigned will make application at the United States District Court for the Southern District of New York at the Courthouse, Foley Square before the Honorable Judge Werker, Room 607 E, on the 24th day of September, 1976, at 9:30 o'clock in the forenoon for an order dismissing the complaint against defendant Merrill Lynch, Pierce, Fenner & Smith, Inc., on the grounds that plaintiffs are not the real parties in interest; lack standing to sue; are engaged in the unauthorized practice of law; that the action is not a true pro se action; and for nonjoinder; or, in the alternative, for a more definite statement.

Yours etc.

THOMAS J. HANRAHAN
Attorney for Defendant-Merrill Lynch,
Pierce, Fenner & Smith Inc.
165 Broadway - 31st Floor
New York, New York 10006

TO:

KALHLMAN LINKER AND DYNAMISMM
67 Broad Street
New York, New York

3/9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAHLMAN LINKER AND DYNAMISMM,

Plaintiffs,

-against-

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. et. al.,

Defendants

----------x

76 Civ. 3543

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

STATE OF NEW YORK)

COUNTY OF NEW YORK)

THOMAS J. HANRAHAN, being duly sworn, deposes and says:

1. Deponent is an attorney duly admitted to practice before this Court; that he represents defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"); that he has read the complaint herein and is familiar with the facts insofar as they relate to this motion to dismiss the complaint.

2. In paragraph 4 of the complaint it is alleged that the individual, plaintiff, Kahlman Linker ("Linker") "had indirect beneficial interest" in certain shares of stock. Neither the caption nor any other part of the complaint indicates in what capacity Linker is bringing this action.

3. Also in paragraph 4 of the complaint, the other defendant, Dynamismm, is described as having made applicatiion to incorporate as a not-for-profit corporation in New York. Such an "entity" is not a legal person with capacity to sue.

4. The same paragraph also reveals that four other individuals have a direct personal stake in the action and ought to be joined as necessary parties.

5. That the named plaintiffs are not the real parties in interest because they were not stockholders at the time of the alleged fraud.

6. That the plaintiffs lack standing to sue under any applicable Securities Act.

7. That the plaintiffs are not appearing on their own behalf and hence this is not a true pro se action.

8. That the actions of plaintiff Linker amount to the unauthorized practice of law.

9. That the complaint cannot be answered.

WHEREFORE, defendant Merrill Lynch respectfully requests that an order be entered dismissing the complaint or, in the alternative, that plaintiffs be compelled to join necessary parties and/or make a more definite statement.

THOMAS J. HANRAHAN

Sworn to this 7th day of
September, 1976.

JAMES J. DOLAN
Notary Public, State of New York
No. 30-0980475 Qual. in Nassau Co.
Commission Expires March 30, 197/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAHLMAN LINKER AND DYNAMISMM,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, ET AL.

Defendant,

76 CIV 3543

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Statement of the Case

This is a pro se action alleging "collusion to defraud stockholders in violation of the Securities Laws". The complaint was filed August 10, 1976 and defendant Merrill, Lynch, Pierce, Fenner & Smith, Inc. (Merill Lynch) was served on or about August 19, 1976.

While counsel for defendant Merrill Lynch is prepared to make certain concessions on procedure in a pro se action, said defendant brings this motion to dismiss based on grounds which are not merely technical.

It is respectfully submitted that to allow this action to proceed in its present form with the present Plaintiff's is to invite confusion, multiple litigation and myriad other problems.

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Point I

The Complaint should be dismissed because Plaintiff's are not the real parties in interest and lack standing to bring this action.

Rule 17 of the Federal Rules of Civil Procedure requires that every action be brought in the name of the real party in interest.

The complaint alleges that this is an action to defraud stockholders of Informatics, Inc. However, neither the individual Plaintiff, Linker, nor the "corporate" Plaintiff, Dynamism, were stockholders of that company at the time of the alleged wrongful acts.

In fact, the complaint alleges Plaintiff Linker had "an indirect beneficial interest" in 1,000 shares which were held in the names of his wife and children. Yet, the complaint does not allege that Linker is a representative of these parties nor that the action is a class action. Therefore Plaintiffs do not come within the exception of Rule 17 nor the operation of Rule 23.

The defendant Merill Lynch can not emphasize too strongly that it is not taking advantage of a non-lawyer to assert purely technical objections. The substance of the objections becomes apparent by trying to answer the question: "Who will be bound by the judgement in this action?"

35a

Assuming, as we must on this motion, that all of the allegations are true, the fact remains that neither Plaintiff was a stockholder at the time of the merger. Therefore, neither can be representative of the class of persons effected. In short, the named Plaintiffs cannot maintain a class action, even if properly pleaded.

The result is that after defending this action, defendants may be subject to multiple suits in this or other jurisdictions brought by anyone who was in fact a minority shareholder.

Worse yet, consider what could happen if Plaintiffs prevail and the Defendants pay the judgement. There is nothing to prevent, for example, Mrs. Linker from bringing her own cause of action since she is not a party herein. Thus, Defendants would be subjected to not only multiple actions but possibly multiple recoveries.

The age of the children is not disclosed. The question, therefore, naturally arises as to the necessity of a guardian ad litem. In the alternative, if the children have attained their majority (which seems likely in view of Linker's forty-five years of business experience) they should be named as parties in their own right.

In any event, the Plaintiff Linker is not the real party in interest because 1) he was not a record owner of the stock as of the day of the alleged wrongful acts; 2) he is not the legal representative of a record owner and 3) he has no personal, direct stake in the outcome of this action.

As to the corporate Plaintiff, defendant questions its very existence as well as its interest in this case. Furthermore, a corporation can not appear pro se. Therefore, if Mr. Linker, who is described in the complaint as its spokesman, tries to represent the corporation in this action, he is engaging in the unauthorized practice of law.

The Plaintiff Dynamismm is described in paragraph 4 of the complaint as having made application to be incorporated as a not-for-profit corporation in New York. Since this Plaintiff is not a de jure corporation, its action is pre-mature at the least.

In addition, Defendant contended that the proposed organization does not meet the requirements of Section 102 (5) of the Not-for-Profit Corporation Law in New York and hence cannot be incorporated

In any event, the corporate Plaintiff is not a real party in interest for the same reasons asserted against Linker.

Finally, it is contended that Plaintiffs lack standing to sue under the 1934 Securities Act (15 USC 78m, et seq.) because neither was a stockholder at the time of the alleged wrongful acts nor is the legal representative of any such person.

Point II

The Complaint should be dismissed because it is not a true pro-se action.

37a

Defendant Merrill Lynch certainly has no objection to the principle that a man can always represent himself.

But in this case it appears that the Plaintiffs are not appearing truly pro se. The allegations in paragraph 4 of the complaint clearly show that Plaintiff Linker is not appearing on his own behalf but rather for his wife and children.

Likewise the Plaintiff Dynamisnm is appearing on behalf of a party named Irving P. Grace.

Defendant respectfully submits that the complaint should be dismissed because it is not a true pro se action; and that to allow the continuance of the action in its present form is to allow an unauthorized practice of law. The Court should not permit such illegal conduct.

Point III

The Complaint should be dismissed for failure to join parites necessary for a just adjudication.

Rule 19, of the Federal Rules of Civil Procedure requires the joinder of a party if 1) comp ete relief can not be accorded in his absence or 2) he claims an interest relating to the subject of the action and his absence leaves any party subject to the risk of multiple obligations. (Rule (9 (2)(ii).)

38a

As previously discussed under Point I, the central issue here is who will be bound by a judgment.

The allegations of paragraph 4 of the complaint clearly show Ruth T. Linker, Kate Linker, Jon S. Linker and Irving P. Grace are in a position to assert the same cause of action against these defendants; so are other minority shareholders, in any.

Thus, in the absence of such interested parties, Defendants are subject to multiple suits and the risk of additional judgements (should Plaintiffs prevail). There is also the very real possibility of conflicting results.

In short, regardless of the outcome of their case, the time and money spent in litigating this suit does not afford the defendants any assurance of finality. In this sense, complete relief cannot be afforded in the absence of a binding judgement on all minority shareholders.

Point IV

The Complaint can not be answered; Plaintiff ought to be compelled to make a more definite and concise statement.

In the event the Court does not agree that the complaint should be dismissed, the plaintiff should at least be ordered to make a more definite and concise statement of the facts.

34a

The Complaint is so saturated with mere conclusions, hypotheticals, ambiguous terms, irrelevant matter and repetitions as to be too vague to be answerable.

For example, in subparagraph "E" of the "Wherefore" clause (p 34) of the complaint, Plaintiffs ask for damages for "bribery", among other things. No where in the body of the complanit can details of this charge be found. Did Merrill Lynch give or recieve the alleged bribe? When? Where? What individuals were involved?

All of paragraphs 15, 16, 17, 18 & 19 of the complaint are superfluous. They merely recount the battles in Linker's crusade to discover information. They do not add one necessary detail to the allegations.

On page 29 of the complaint, defendant Merrill Lynch (and others) are charged with "capricious disclosure". It is respectfully submitted that this phrase is too ambiguous to be comprehensible in the context of this action.

In fact, many of the defendants actions are allegedly wrongful because there were "capricious". Plaintiffs use this word 12 times in 34 pages. Frankly, counsel is at a loss as to how to answer such a charge, except, of course, to enter a general denial.

Likewise counsel is taken back by allegations that the whole "conspiracy" started in the New York State Legislature, swept through California and Delaware, and culminated in Washington D.C. where the S.E.C. "conspired" to violate its own rules.

40a

It is respectfully submitted that such statements are 1) mere conclusions and not factual allegations; 2) unnecessary and scandalous, and 3) irrelevant to any cause of action alleged.

Again even allowing for the fact that the pleading was not drafted by a lawyer, there are so many hypotheticals that Defendant is unable to ascertain what it may have done that Plaintiffs allege was wrongful.

For example, in paragraph 3 of the complaint it is alleged Defendant Merrill Lynch "may have been acting in concert" with others to defraud stockholders; that said Defendant "may have been colluding" with the S.E.C. for the same purpose. Defendant is entitled to know if it is being charged with conspiracy or not. And if so, the names or titles of personnel involved as well as on other particulars as to how the alleged conspiracy was hatched and carried out.

41a

Conclusion

It is respectfully submitted the complaint should be dismissed.

Counsel apologizes to the Court for this most unusual brief. Both the breadth of deficiencies and time requirements necessitated the lack of research. It is hoped that the patent problems and reference to appropriate rules will suffice. However, if the Court sees fit, counsel will be more than happy to research the issues in detail and present it in another memorandum.

RESPECTFULLY SUBMITTED,

Thomas J. Hanrahan
Attorney for defendant
Merrill, Lynch, Pierce, Fenner
& Smith, Inc.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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KAHLMAN LINKER and DYNAMISMM, :

Plaintiffs, :

- v s - : 76 Civ. 3543 (HFW)

MERRILL LYNCH, PIERCE, FENNER & SMITH, et al, :

Defendants. :

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B e f o r e :

HON. HENRY F. WERKER,

District Judge.

New York, New York
September 8, 1976 - 2:20 p.m.

A p p e a r a n c e s :

KAHLMAN LINKER, Pro Se.

WERNER WEINSTOCK, ESQ. and
MICHAEL BRODY, ESQ.,
Attorneys for Defendants
Equitable Life Holding and
J. Henry Smith.

THOMAS J. HANRAHAN, ESQ.,
Attorney for Defendant Merrill Lynch,
Pierce, Fenner & Smith.

SULLIVAN & CROMWELL, ESQS.,
Attorneys for Defendant Goldman, Sachs & Co.;
By: CHARLES E. DORKEY, ESQ., of Counsel.

jgsr

Appearances: [continued]

JACOBS, PERSINGER & PARKER, ESQS.,
Attorneys for Defendant Walter Bauer;
By: IRVING PARKER, ESQ., of Counsel.

jgsr

THE COURT: Good afternoon, gentlemen.

MR. LINKER: Your Honor, I have served my papers today in answer to the motion for dismissal on the part of Equitable Life Holding Company in relation to my order to show cause for a preliminary injunction.

I firmly believe that a receiver or the equivalent should be ordered by the Court in order to serve and protect the interests of the frozen out stockholders of Informatics.

THE COURT: Let me ask you this, Mr. Linker: Were you at the time of this merger a stockholder of any of these corporations?

MR. LINKER: I was a former stockholder --

THE COURT: No. Wait a minute. That is not an answer.

MR. LINKER: At the time of this merger I had only indirect beneficial interests.

THE COURT: What was that?

MR. LINKER: In one thousand shares of Informatics stock.

THE COURT: What was the indirect beneficial interest?

MR. LINKER: Held in the name of Mrs. Ruth Linker, my wife, and six hundred shares held in the name

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of my daughter Kate Linker and six hundred shares held in the name of my son John S. Linker.

THE COURT: Those were in their names?

MR. LINKER: Yes, sir.

THE COURT: Were they of age at that time?

MR. LINKER: Yes, without any question.

Dynamismm has power of attorney in this case to represent the interests of Irving P. Grace, who at the time of this merger held six thousand shares of Informatics, Inc.

THE COURT: Where is Dynamismm? Who represents Dynamismm?

MR. LINKER: I represent Dynamismm.

THE COURT: What is Dynamismm?

MR. LINKER: Dynamismm is at this point an informally organized association of 177 participants formed for the purposes of acting in the enlightened interest of investors of small or moderate means. The i-s-m-m of Dynamismm speaks of that.

Dynamismm is at this stage expecting ultimately to be organized under the State of New York as a not for profit corporation.

THE COURT: But it is not as of now.

MR. LINKER: It is not as of now, no, sir.

THE COURT: All right. Go ahead.

MR. LINKER: I believe I have documented, without one iota of reputation-ability on the part of defendants, that there can be no remedy at law which could give justice to the stockholders of Informatics, Inc. who were frozen out illegally, if not fraudulently, from ownership of the stock of Informatics by a manipulative device on the part of Equitable and the management of Informatics, Inc., and there can be no remedy at law which could give justice except by making certain that the corporate status and the stockholder status of Informatics were returned to the position that existed directly prior to the purported approval of the merger under Delaware law on February 28, 1974.

I appeared at the special stockholders meeting on February 27, 1974 and at the very start of the meeting moved that the meeting be adjourned and that the proxy report be rewritten on the basis that it contained false or misleading statements as well as that it omitted to make statements of material fact that tended to make the statements made false and misleading. I then indicated, I demanded, that the meeting be adjourned, and of course this was not done.

I indicated that I was going to at a later date,

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at the very next date, appear in Washington at the offices of the SEC and request that they thoroughly investigate the false or misleading nature of the proxy report, and I did that.

At nine o'clock the following morning I was in Washington and complained verbally to the SEC. I was asked to provide specifics in terms of my complaint and documentation for the assertion that the statements were false and misleading, and I have complied with those.

But, shocking as it may be, the SEC having confirmed, acknowledged the receipt of my letters and thanked me for it, saying it was most important in the discharge of their responsibilities, after doing that did nothing, and it wasn't until after a good deal of prodding, which covered over eight or nine months thereafter, that I saw they had no interest in investigating and in fact would not investigate because the man to whom I had complained was actually the man who had reviewed the original proxy report on the part of the Informatics merger, and I have documented in both the complaint and in my supplementary affidavit or order to show cause for preliminary injunction that there was obvious collusion on the part of the SEC to aid the management of Informatics and the management of Equitable

to defraud the stockholders of Informatics.

I made every effort, in addition, in bringing this fraudulent action to the attention of the Insurance Department, New York State, and I even went to the extent of providing a letter which was submitted to the Equitable by the Insurance Department outlining questions that they should answer in defense of a belief that the proxy report was not false and misleading.

I found, however, that the Insurance Department could not do anything at all in respect to it and Equitable was in the position of saying that the Insurance Department had no right to interfere because of the passage in 1969 of the amendments to the insurance law which permitted a holding company incorporated in a State outside of New York to acquire, under certain conditions, corporations some of which might have ancillary activities.

As a matter of fact, on investigation, that law, it is my firm belief, and I have stated that in my supplementary memorandum, was so written that it permits, without any question, a holding company incorporated in Delaware in effect to defraud the stockholders of a company acquired.

Strange to say, one of the directors of the

Equitable happened to have been the chairman of the committee which apparently encouraged the legislature of the State of New York to pass that law, and I did everything I could to get the ear of Mr. J. Henry Smith, the then chairman of the Equitable, to talk with me. I attempted to talk, to get people in the legal department to talk with me, and none of them would in any event see me or listen to any of my suggestions that they were doing something that was not only unfair but illegal.

In the attempts to get information in respect to it after the SEC would not cooperate, I spent a great deal of time attempting to get information from the files of the SEC under the Freedom of Information Act procedures, and they told me that is the procedure, which normally requires only ten days to get your information, then you have a twenty-day period of appeal. It took me over eight months and I still was not able to get information, they having indicated the files were lost and other capricious or frivolous kinds of answers.

On January 2nd of this year I filed suit under the Freedom of Information Act against the SEC, and that Act is so written that the District Court Judges are required to give preference, expedited preference on the calendar. But here it has been now over eight months and

the case has not been heard.

THE COURT: Who was that case assigned to?

MR. LINKER: Justice Greene.

THE COURT: In Washington, D. C.?

MR. LINKER: In Washington, June Greene.

I went into the offices. My counsel was disinclined to push for me, so I went down to Washington myself and on three occasions went into the offices of Judge Greene --

THE COURT: There is no Justice in this court; there are only judges.

MR. LINKER: Thank you. Thank you, your Honor.

THE COURT: So it is Judge Greene.

MR. LINKER: Judge Greene. And I was told that the docket on the Freedom of Information cases in Washington are piled so high that the judges can't get to them.

But I indicated too that this information was of the greatest importance, it was of the greatest importance that I get this information, because I needed it for another cause of action, which is of course this one, that I had intended to file.

What I have documented in both the complaint and in my supplemental argument for my show cause order

for preliminary injunction was that capriciousness, illegality has been discovered of an irrefutable nature that involved not only the management of Informatics, Inc. and the management of the Equitable Life Assurance Company but also Merrill Lynch, Pierce, Fenner & Smith, who have apparently, with the clear approval or aid of the SEC, violated two major laws, provisions or sections of the Securities and Exchange Act, but also Dean, Witter was involved and Goldman, Sachs was involved, Goldman, Sachs having advertised in the paper in a so-called tombstone ad that they were advisers to Equitable in this so-called merger.

This should never have been permitted as a merger, it should have only been permitted as a tender offer, and it was so handled that stockholders were given no notice in time to protest and protect their positions.

But the most shocking part of all of this is the obvious collusion on the part of the SEC in aiding a large institution to defraud stockholders, and the one of course, who paid Goldman, Sachs' fee was Equitable, I presume. Of course I don't know, but they wouldn't have served as adviser had they not done so.

I must tell the Court that plaintiff also has

pending a petition in review in the Circuit Court of Appeals against Roderick M. Hills and the other three SEC Commissioners, alleging that they aided and abetted, served and protected, made absolute and perpetual, the power of the private club of the New York Stock Exchange and in so doing --

THE COURT: Mr. Linker, we are off the subject matter.

MR. LINKER: All right. I just wanted to say --

THE COURT: I want to know who is the stockholder who has given the power of attorney of Dynamismm.

MR. LINKER: Mr. Irving P. Grace of Lambertville, New Jersey.

THE COURT: And was he a stockholder at the time this merger took place?

MR. LINKER: Yes, sir.

THE COURT: And who is the unincorporated association constituting Dynamismm?

MR. LINKER: That is Kahlman Linker.

THE COURT: That is yourself.

MR. LINKER: That is myself.

THE COURT: You were not a stockholder at the time.

MR. LINKER: I was not a stockholder at the time.

THE COURT: I don't know what your standing here is in court, if you were not a stockholder.

MR. LINKER: I am suing --

THE COURT: It is not a pro se action if you were not a stockholder. " ro se" means "I am appearing for myself."

MR. LINKER: Well, for my ind. ect beneficial interest.

THE COURT: Indirect beneficial interest has nothing to do with this case, sir. The fact that your wife may own securities, that your son and daughter may own securities has nothing to do with this case.

MR. LINKER: May I say, sir --

THE COURT: And I would also like to know who is preparing these papers for you.

MR. LINKER: I prepared them entirely myself, with no help whatsoever.

THE COURT: You are sure of that?

MR. LINKER: Absolutely, sir; absolutely, sir.

THE COURT: Because, if there is a lawyer involved in this, I would like to know, because he is subject to criticism under the Canons of Ethics.

MR. LINKER: There is no lawyer involved whatsoever.

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THE COURT: All right. I've heard enough from you. I will hear from anybody else who wants to speak.

MR. LINKER: May I, sir?

THE COURT: No. I've heard enough.

MR. WEINSTOCK: Your Honor, I am Werner Weinstock. I appear for the Equitable Life Holding Company and J. Henry Smith.

I certainly will not attempt to speak for Mr. Roderick Hills or the SEC and defend the very serious allegations made against them. I assume that the purpose of this argument is to hear the issues involved in Mr. Linker's preliminary injunction motion, although I must confess I am not certain that that preliminary injunction motion is still being sought, in view of the papers in reply that I just received before court convened, in which a director is now to be appointed. I don't know whether that is any alternative or in addition. I don't know.

Similarly, I will not speak to the merits or the issues in this case, leaving that to a subsequent time. I think our papers, particularly the affidavit and the briefs submitted, served previously upon Mr. Linker are quite clear. The motion should be denied if for no other reason than the fact that two and a half

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years have expired since the merger was effected, in all of which time Mr. Linker knew what was happening, how it happened, and that the merger indeed had been effected.

Assuming but not conceding that harm came to Mr. Linker at the time of the merger, namely in February 1974, that harm has existed for all of these two and a half years, and in addition to that the remedy need not be equitable but there is an adequate relief at law.

For all of these reasons I wou'd suggest to the Court, and I respectfully request that the motion be denied.

THE COURT: Are you speaking to the motion for dismissal as well?

MR. WEINSTOCK: Your Honor, may I suggest that we leave the motion on the part of Equitable Life Holding, unless your Honor wishes me to do it otherwise, for a subsequent time?

THE COURT: All right.

Is there anyone else?

MR. DORKEY: Your Honor, my name is Charles Dorkey. I am from Sullivan & Cromwell and we represent Goldman, Sachs & Co. We have not been served by the preliminary injunction. We are not being bound by it, so I have nothing to say on that.

I came into court today to seek an extention of time to enter and move with respect to the complaint the same day that Equitable Holding Company has, October 5. I asked the plaintiff for an extension and he did not grant it.

THE COURT: All right.

MR. HANRAHAN: If the Court please, my name is Hanrahan. I am the attorney for the defendant Merrill Lynch. This whole proceeding is highly irregular and I think it goes deeper than the fact the plaintiff is merely a layman representing himself.

Likewise, we have not been served with the motion papers for the preliminary injunction and I feel that we cannot be bound by whatever is in those papers.

I have this date served Mr. Linker and the attorneys present here with the notice of motion to dismiss the complaint, which raises some of the grounds that your Honor raised in this discussion with Mr. Linker, and the return date is set for September 24th. If your Honor will hear it then, I will be content to rest on the papers.

THE COURT: All right.

MR. PARKER: Your Honor, my name is Irving Parker. My appearance has been noted. We will also

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respectfully request additional time within which to answer or move in respect of the complaint.

I might add, your Honor, that it seems to me that on the basis of the statements made by Mr. Linker there is no action pending here, he has no standing to sue, and with the greatest respect I suggest to your Honor that the Court sua sponte would be fully justified in dismissing this action without taking the time of the Court any further, without taking the time of the purported parties any further, and without taking the time of counsel, your Honor.

THE COURT: Anyone else?

MR. WEINSTOCK: Your Honor, may I also request additional time for the defendant J. Henry Smith, who was served on September 2, that extension of time with respect to answer our motion, to October 5?

THE COURT: Mr. Linker, I'll listen for a minute.

MR. LINKER: Sir, Dynamismm appears and appears pro se for a very definite reason.

THE COURT: Dynamismm can't appear pro se. There is no such person as Dynamismm.

MR. LINKER: Sir, I would require just a moment to explain the problem that the plaintiff pro se had in

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this situation.

I have had frightening experiences in my lifetime in the employment of lawyers.

THE COURT: I am not going to listen to this, Mr. Linker.

MR. LINKER: No. Just one second, your Honor.

THE COURT: I am not going to listen to it.

MR. LINKER: Sir?

THE COURT: I've had frightening experiences listening to pro se plaintiffs, believe me.

MR. LINKER: I would know that would be true, sir. But Dynamismm was created because it appears that an individual of small or moderate means has tremendous disadvantages in any suit that he may have when he moves against large corporations or wealthy individuals, and it has been my experience that an individual who does not have the funds to match the limitless funds of large institutions and corporations are not able to get justice in the courts because the other sides engage in procedural harassment to such a degree that they can't be prevented by the most enlightened judge, and Dynamismm was formed with the hope and expectation that some vehicle would be set up which would aid these individuals in getting good counsel and money to finance their causes

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where there is merit involved.

Now, one, Kahlman Linker has lost all his money. I haven't the money to spend for an attorney.

Two, if I had had money to operate for an attorney, the expenses would have been considerable, and this happens to be a case where the facts are of the greatest importance and the law. The securities law is clear in respect to this and the facts are clear in respect to this and there could not have been -- plaintiff could never have been able to assert his rights except in having sought out a firm of lawyers who concentrated on derivative cases, and that was, to my point of view, something I would not engage in.

I'm not, of course, conversant with the law with respect to pro se, but I believe that when, and as if my wife and two children have stock in this company, my indirect beneficial interest existed there and should have been, to my point of view as a layman -- should have had the rights that they possessed.

Further than that, I held stock in Informatics less than two months before the first announcement of the tender offer.

THE COURT: But you sold it.

MR. LINKER: I sold it but had my sister in

Louisville buy it. I sold it only because my financial affairs were --

THE COURT: But the important point is you sold it. At the time of this merger and at the time that the tender offer was made you were not a stockholder. Is that right or not?

MR. LINKER: That is not wholly true. But --

THE COURT: No.

MR. LINKER: Is there no standing granted to an indirect beneficial --

THE COURT: No, none.

Mr. Linker, I've heard enough. From what I heard today, the Court sua sponte is dismissing the complaint --

MR. LINKER: I didn't hear that, your Honor.

THE COURT: The Court of its own motion is dismissing the complaint on the ground that the plaintiff pro se in this matter has no beneficial interest in the matter of the merger. He was not a stockholder at the time and he is appearing here on behalf of an indirect beneficial interest for a daughter, son and wife. For all I know, they have not authorized him to appear here on their behalf.

Consequently I am dismissing the complaint and

I am not deciding the question of preliminary injunction for the simple reason that it never has arisen.

We will be in recess until ten o'clock Monday morning.

MR. DORKEY: Your Honor, shall I prepare an order?

THE COURT: Prepare an order, please.

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Reargument denied
So ordered
9/15/76
Henry Werker USDJ

DYNAMISMM

Action in the enlightened interests of
Investors of Small or Moderate Means

67 Broad St. (32nd Floor), New York, N.Y. 10004
Telephone (212) 425-3620

(M)

SEP 16 1976

S.D. OF N.Y.

September 15, 1976

Hon. Judge Henry F. Werker
United States District Court
Southern District of New York
Foley Square
New York, N.Y.

RECEIVED IN CHAMBERS
OF JUDGE HENRY F. WERKER
SEP 15 1976

Re: Notice of Reconsideration
76 Civ. 3543 (HFW)

Dear Judge Werker:

This is written as a notice of reconsideration and in opposition to defendants' motion to dismiss with prejudice, as submitted to the Court by defendant counsel (for Goldman, Sachs & Co.) on September 8, 1976.

Plaintiffs believe that in the interest of obtaining justice, they have erred grievously in having named Merrill Lynch, Dean Witter & Co., and Goldman, Sachs & Co. in the same cause of action with The Equitable Life Holding Corp. and the other defendants.

In so doing, plaintiff, Linker has permitted Merrill Lynch, Dean Witter & Co., and Goldman, Sachs & Co. to benefit, on purely technical grounds, from the fact that he may not, as pro se, have standing to sue The Equitable.

Plaintiff believes that there is no question but that he has standing to sue, as pro se, Merrill Lynch and the other two securities firms were he to initiate a separate action only against them.

Plaintiff also believes that, due to the unique character and record of his and his family's ownership of Informatics, Inc., stock, a reconsideration by the Court will order that he, in fact, did have standing to sue as plaintiff pro se, especially if defendant, Equitable Life Holding Corp. did not oppose such. (The Court will remember that counsel for The Equitable did not, at the hearing, join with counsel for the other defendants on such grounds, his only argument for dismissal having been laches).

In any event, plaintiff also believes justice can be afforded only if, in a separate suit against The Equitable,

plaintiff has the privilege of submitting a carefully prepared memorandum in opposition to defendants' motion to dismiss (for the reason plaintiff pro se and Dynamism do not have standing to sue as plaintiffs pro se). In fact, it is greatly in the interest of Dynamismm's objectives that a precise ruling on such issue be made. Dynamismm's objectives, of course, include helping individuals of small or moderate means effectively to offset the tremendous disadvantages they possess in the courts when opposed by defendants' great wealth and highly capable counsel.

Plaintiff respectfully requests that the Court rule that dismissal in the instant proceeding be withheld pending the refiling of the instant proceeding in two separate suits, one naming Merrill Lynch, Dean Witter, Goldman, Sachs and the Securities and Exchange Commission, and the other naming only The Equitable Life Holding Corporation.

Yours respectfully,

Kahlman Linker

KL:AP
cc to all defendants

RUTH T. LINKER, being duly sworn, deposes and says,

that the attached specimens are true copies of pages 3 and 10 of her last will and testament dated the 27th day October, 1972, and since unamended.

Ruth T. Linker

Ruth T. Linker

Princeton, New Jersey

Sworn to before me

this 27th day of October, 1976

GLORIA VENTA MARUCA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 19, 1980

after called my residuary estate, shall be disposed of as follows:

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(a) If my husband, KAHLMAN LINKER, survives me, my residuary estate shall first be divided into two equal shares, hereinafter called Fund A and Fund B. An adjustment shall then be computed as follows:

> The aggregate value of all property included in my gross estate for Federal estate tax purposes (i) which passes under the non-residuary provisions of my Will or (ii) which has passed otherwise than under my Will, shall be divided as between "marital property" (that is, property which passes or has passed to my husband in such manner as to qualify for the Marital Deduction) and "non-marital property" (that is, the balance of said property). If the value of said "marital property" is greater than the value of said "non-marital property", a sum equal to one-half of the difference shall be deducted from Fund A and added to Fund B. Conversely, if the value of said "marital property", is less than the value of said "non-marital property", a sum equal to one-half of the difference shall be deducted from Fund B and added to Fund A. For purposes of this paragraph, "value" means the final determination of value for Federal estate tax purposes; "property" includes "interests in property". If any expenses chargeable against principal are claimed and allowed as income tax deductions (instead of estate tax deductions), then an amount equal to one-half of such allowed expenses shall be deducted from Fund B and added to Fund A.

(1) Fund A shall be distributed to my husband absolutely.

(2) Fund B shall be divided into separate shares per stirpes for my descendants me surviving and each such share shall be disposed of as provided in subdivision (c) of this Article SIXTH.

(b) If my husband predeceases me, my residuary estate shall be divided into separate shares per stirpes for my descendants me surviving and each such share shall be disposed of as provided in subdivision (c) of this Article SIXTH.

(c) Any share above directed to be disposed of

property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

(g) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being my intent so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 21st day of October, One Thousand Nine Hundred Seventy-two.

Ruth T. Linker (L.S.)

The foregoing instrument was at the date thereof subscribed, sealed published and declared by the above-named Testatrix, RUTH T. LINKER, as and for her Last Will and Testament in our joint presence, and we, at her request, in her presence and in the presence of each other, have at the same time subscribed our names as witnesses thereto.

[illegible] residing at [illegible]
New York NY

Alice M. Ng residing at [illegible]
N.Y., N.Y.

_____ residing at _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAHLMAN LINKER AND DYNAMISMM

PLAINTIFFS, PRO SE

V.

MERRILL LYNCH, PIERCE, FENNER & SMITH INC., ET AL.,

DEFENDANTS

NOTICE OF APPEAL

76 CIV. 3543
(JUDGE WERKER)

NOTICE IS HEREBY GIVEN THAT KAHLMAN LINKER AND DYNAMISMM ABOVE NAMED, HEREBY APPEAL FROM THE ORDER OF THE HON. HENRY F. WERKER, DATED SEPTEMBER 16, 1976, IN THE ABOVE ENTITLED MATTER.

DATED: NEW YORK, N.Y.
SEPTEMBER 17, 1976.

Kahlman Linker

KAHLMAN LINKER, PLAINTIFF PRO SE
61 BROADSTREET
NEW YORK, N.Y. 10004

TO:
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.
DEAN LUTTER & CO. INC.
GOLDMAN, SACHS & CO.
WALTER E. BAUER
WERNER L. FRANK
FRANCIS V. LUCIER
J. HENRY SMITH, ET AL.
THE EQUITABLE LIFE BUILDING CORP.